says: "Trade-marks not being copyright, registration of a trade-mark, or, what comes to be much the same thing, a title of a book or paper, under the copyright acts, is unnecessary and useless." And see (1846) SPENCER, Senator, New York Court of Errors; *Taylor* v. *Carpenter*, *supra*, and *Wolfe* v. *Barnett*, 24 La. Ann. 97; 13 Am. Rep. 111.

HUGH WEIGHTMAN.

New York.

RECENT ENGLISH DECISIONS.

House of Lords.

DEBENHAM *v.* MELLON.

The mere fact of cohabitation is not sufficient to give a wife an implied authority to pledge her husband's credit for necessaries, and it is not necessary for the husband to prove that a tradesman supplying his wife with goods knew that he had prohibited her from pledging his credit.

Jolly v. *Rees*, 15 C. B. (N. S.) 628, followed and approved.

APPEAL by the plaintiffs against the judgment of the Court of Appeal, affirming the judgment of the Queen's Bench Division.

The action was brought to recover the price of articles of dress supplied by the plaintiffs to the defendant's wife during cohabitation, the articles being necessaries suited to her rank in life. The defendant had forbidden his wife to pledge his credit, but this prohibition was not known to the plaintiffs.

BOWEN, J., before whom the action had been tried, entered judgment for the defendant, and his judgment was affirmed by the Court of Appeal, consisting of BAGGALLAY, BRAMWELL and THESIGER, L. JJ.: Law Rep., 5 Q. B. Div. 394.

The plaintiffs appealed to this House.

The facts in evidence are more fully stated in the judgment delivered by the Lord Chancellor.

Benjamin, *Q. C.*, and *A. L. Smith*, for the appellants.—When a husband and wife are living together, the latter is always presumed to have authority to pledge her husband's credit for all necessaries suitable to the station of the parties. This apparent or ostensible authority cannot be secretly revoked, and therefore it was for the respondent to show that the revocation of his wife's

authority to pledge his credit was known to the appellants. It is submitted that the judgment of the Court of Appeal clothes the wife with no more authority than a servant. Much of the language in the judgments in *Manby* v. *Scott*, 2 Sm. L. C. 409, is favorable to the appellant's contention. [Lord SELBORNE, C.—In that case the wife had been living apart from the husband without any justification.] In *Dyer* v. *East*, 1 Mod. 9, Lord Chief Justice KELYNGE spoke of the decision in *Manby* v. *Scott*, as being "a hard judgment," and he also said that "the husband must pay for the wife's apparel unless she elope and he give notice not to trust her." In *Etherington* v. *Parrot*, 1 Salk. 118, Lord Chief Justice HOLT said: "While they cohabit the husband shall answer all contracts of hers for necessaries, for his assent shall be presumed to all necessary contracts upon the account of cohabiting, unless the contrary appears." In Comyn's Digest, tit. "*Baron and Feme*," Q., it is stated that, "if a wife buy necessary apparel for herself, the assent of the husband shall generally be intended." *Bolton* v. *Prentice*, 2 Str. 1214, shows that a husband who fails to supply his wife with necessaries is not relieved from liability even by the fact that he has forbidden credit being given to her. In *Waithman* v. *Wakefield*, 1 Camp. 120, Lord ELLENBOROUGH told the jury that, "where a husband is living in the same house with his wife, he is liable to any extent for goods which he permits her to receive there; she is considered as his agent, and the law implies a promise on his part to pay the value." *Montague* v. *Benedict*, 3 B. & C. 631, may be relied upon on the other side, but there the goods furnished were not necessaries. In *Holt* v. *Brien*, 4 B. & Ald. 252, the plaintiff had express notice that the defendant made his wife an allowance, but Mr. Justice BAYLEY said that, "if a husband makes no allowance to his wife, and he gives to her a general credit, she may contract debts for the necessary supply of herself and family, for which he will ultimately be liable." In *Read* v. *Legard*, 6 Exch. 636, it was held that a husband was liable for necessaries supplied to his wife even while he was a lunatic, and the judgment of Mr. Baron ALDERSON is founded upon the consideration that the marriage contract imposes upon the husband an absolute obligation to support his wife. *Ruddock* v. *Marsh*, 1 H & N. 601, establishes the authority of the wife to bind her husband in matters which are ordinarily under a wife's control, and in *Johnston* v. *Sumner*, 3 H. & N. 261, Lord Chief Baron POLLOCK

observed that, "if a man and his wife live together, it matters not what private agreement they may make: the wife has all usual authorities of a wife." [Lord BLACKBURN.—In that case the court declined to set aside the nonsuit.] In the present case the judges in the courts below held that they were bound by *Jolly* v. *Rees*, 15 C. B. (N. S.) 628, but in that case there was evidence that the defendant had given his own orders for goods supplied for the use of the household. This House is not, however, bound by that case, which was the first in which a secret revocation of the wife's authority was held to be an answer to a claim for goods supplied to her. It is submitted that the decision of the majority of the judges in the Court of Common Pleas is in conflict with *Ruddock* v. *Marsh*. Mr. Justice BYLES differed from the other members of the court, and in *Morgan* v. *Chetwynd*, 4 F. & F. 451, Lord Chief Justice COCKBURN appears to have doubted whether the decision of the Court of Common Pleas was correct.

Willis, *Q. C.*, and *McCall*, for the respondent.—The mere fact of marriage gives the wife no implied authority to pledge her husband's credit, except where the latter has, through no fault of the wife, neglected to supply her with necessaries, and therefore it was for the plaintiffs to give some evidence which would warrant an inference of assent or ratification by the defendant. The observations made by Lord Chief Baron POLLOCK in *Johnson* v. *Sumner*, were not necessary for the decision of the case. *Seaton* v. *Benedict*, 5 Bing. 28, governs the present case. Lord Chief Justice BEST there said: "A husband is only liable for debts contracted by his wife on the assumption hat she acts as his agent. If he omits to furnish her with necessaries he makes her impliedly his agent to purchase them. If he supplies her properly she is not his agent for the purchase of an article, unless he sees her wear it without disapprobation. In the present case the husband furnished his wife with all necessary apparel, and he was ignorant that she dealt with the plaintiff." In *Reneaux* v. *Teakle*, 8 Exch. 680, Mr. Baron MARTIN observed that the wife's implied authority to pledge her husband's credit "is only a presumption arising from cohabitation, and may be rebutted," and that, "if a husband tells his wife that he will not permit her to have a particular kind of dress, she cannot bind him by ordering it." *Reid* v. *Teakle*, 13 C. B. 627, shows that the plaintiff must prove, in a case like the

present, not only that the goods supplied were necessaries suitable to the defendant's station in life, but also that the wife had either an express or an implied authority to bind the husband by her contracts. In *Atkyns* v. *Pearce*, 2 C. B. (N. S.) 763, Mr. Justice CRESSWELL said that the decision in *Ruddock* v. *Marsh*, could only be sustained upon the supposition that the wife had acted with the husband's cognisance. *Jolly* v. *Rees*, is precisely in point, and has been unquestioned for sixteen years. In the recent case of *Eastland* v. *Burchell*, Law Rep., 3 Q. B. Div. 432, Mr. Justice LUSH described the wife's authority to pledge her husband's credit as "a delegated, not an inherent, authority."

They also referred to *Dennys* v. *Sargeant*, 6 C. & P. 419; *Atkins* v. *Curwood*, 7 Id. 756; *Spreadbury* v. *Chapman*, 8 Id. 371; *Mizen* v. *Pick*, Id. 373 (note); *Freestone* v. *Butcher*, 9 Id. 643; *Shoolbred* v. *Baker*, 16 L. T. (N. S.) 359.

Benjamin, Q. C., replied.

Lord SELBORNE, C.—This appeal raises the very important question whether the case of *Jolly* v. *Rees*, which was decided by the Court of Common Pleas in 1864, and, so far as I am aware, has never since been seriously questioned, was correctly determined. The point decided in that case, as I understand it, was this: that the question whether a wife has authority to pledge her husband's credit is to be treated as a question of fact, to be determined upon the circumstances of each particular case, whatever may be the rules of law as to the *prima facie* presumptions to be drawn from a particular state of circumstances. That principle is now controverted, and the first question for your lordships to decide is this, whether the mere fact of marriage implies a mandate by law making the wife, who cannot herself contract, except so far as she may have a separate estate, the agent in law for the husband, to bind him and to pledge his credit by what might be her own contract if she were a *feme sole*. It is sufficient to say that all the authorities show that there is no such mandate in law, except in a case of necessity, which necessity may, perhaps, arise when the husband has deserted the wife, or has compelled her to live apart from him without properly providing for her, but cannot, when the parties are living together, be said ever *prima facie* to arise, because, if, in point of fact, she is maintained, there is no *prima*

facie evidence that the husband is neglecting to discharg his particular duty, or that there can be any necessity for the wife to run him into debt for the purpose of keeping herself alive or supplying herself with necessary clothing; I therefore lay aside the proposition that the mere fact of marriage implies a mandate such as is contended for on behalf of the appellants.

The next question is, does the law imply a mandate from cohabitation? and, if it does, on what principle does it do so? Cohabitation is not, like a marriage, a *status* or a new contract, but it is a general expression for a certain condition of facts, and, if the law does imply such a mandate, it must be as an implication of fact, and not as a necessary conclusion of law. No doubt there are authorities which say that the ordinary state of cohabitation carries with it some presumption, some *prima facie* evidence of an authority to do those things which, in the ordinary circumstances of cohabitation, it is usual for a wife to have authority to do. Mr. *Benjamin* says that those words are not the best that might be used for the purpose, but that "apparent authority" or "ostensible authority" would be better. Those words may be very good words for the ordinary state of circumstances in which the case of cohabitation between husband and wife exists, out of which the presumption arises, because in that state of circumstances the husband may be said to do, or to evidently consent to, acts which hold out his wife as his agent for certain purposes, and then the word "apparent" or "ostensible" becomes appropriate; but where the husband neither does, nor consents to, anything to justify the proposition that he has held out his wife as his agent, then I take it that the question, whether he has, as a matter of fact, given his wife authority, is one which must be examined upon all the circumstances of the case.

No doubt a husband, though he has not intended to hold out his wife as an agent, and though she may not actually have had any authority, may have so conducted himself as to entitle a tradesman dealing with her to rely upon some appearance of authority. If he has done so he may be liable, but the question must be examined as one of fact, and all the authorities, as I understand them, practically so treat it when they speak of this as a presumption *prima facie*, not absolute, not in law, but capable of being rebutted; and when Lord Chief Baron POLLOCK, in *Johnson* v. *Sumner*, said that all the usual authorities of a wife under those circumstances

might be assumed, notwithstanding any private arrangement, I apprehend that he had in view that state of facts during cohabitation, when a wife is managing her husband's house and establishment, which usually raises a presumption which, no doubt, when once raised by the husband's acts or by his assent to the acts of his wife, might not, as against the person relying upon that appearance of authority, be got rid of by a mere private agreement between husband and wife.

In *Reneaux* v. *Teakle*, which was also cited during the argument, Lord Chief Baron POLLOCK said that the case of a wife did not differ, at any rate in principle, from that of any one else in an establishment. If there is an establishment of which there is a domestic manager (although, perhaps, the wife is the most natural domestic manager and the presumption may be strongest when she is so), yet the presumption is the same if such domestic manager is not a wife, but merely a woman living with a man, whether with or without an assumption of the name of wife. Again, the principle is the same if the domestic management is delegated to a housekeeper, or a steward, or any other kind of servant; and, therefore, in all cases the question must be one of fact.

In the present case that state of circumstances is wanting which usually accompanies cohabitation. There was no establishment, and no living upon credit for the ordinary necessary purpose of providing for the daily wants of a household so as to raise the ordinary presumptions. The husband and wife were both servants of a company which owned a hotel at Bradford, in which they lived; and therefore there was, in fact, no domestic management. The credit was given by a firm of London tradesmen to a woman living at Bradford, and there was nothing to show that the appellants were dealing upon the faith of any appearance of authority in the wife, for they made out all the bills in her name, which, no doubt, would not have prevented them from resorting to the husband, if otherwise liable, but which certainly does not assist their case as tending to show that they were misled by any appearance of authority into the belief that they were giving credit to him. It is clear that the husband knew nothing about the ordering of the goods; and the necessary conclusion of fact is, that he never, by any act or consent, held out his wife as having authority, to the appellants or to any other tradesmen.

If, then, the appellants can recover at all, it must be because

there was either an authority in fact or an authority in law implied from the necessity of the case. I think it may well be doubted whether the ordinary presumption even shows the authority in the state of facts which I have mentioned; but, taking it to be so, since the clothes might be necessary for the wife, and it would be the husband's duty to supply them if there were no other means of doing so, the evidence conclusively shows that there was, in fact, no authority. It appears that, more than four years before the appellants had any dealing with the wife, when the husband and wife were living in Devonshire, some other people gave credit to the wife as the respondent's agent, but it is not suggested that the appellants knew of this. The respondent disapproved of this state of things, and put a stop to it, expressly revoking any authority which he might have previously given to his wife, and he afterwards made her an allowance sufficient for any necessary purposes of dress, according to the state of his circumstances and condition of life. It is urged that the appellants had no notice of this revocation: but then they had no notice of the circumstances which made the revocation necessary. They only knew that their customer was a married woman, and her authority to bind her husband, as his agent, if it had ever been given, had ended four years earlier.

Then comes the question whether the husband can be made liable because the articles supplied were in some sense necessaries. As to this, it is clear that, when a reasonable allowance is made, as in this case, by the husband to the wife, no authority at law to bind him can *ex necessitate* be implied on the part of the wife, even if she has purported to do so.

I must add, without going through the authorities, that if you regard the principles which run through all the cases, rather than casual *dicta*, which are necessarily colored by the particular facts before the judges, all the decisions will be found to be consistent with reason and justice, as well as with what was held by the majority of the Court of Common Pleas in *Jolly* v. *Rees*. I therefore propose to your lordships to dismiss the appeal, with costs.

Lord BLACKBURN.—If the case were not identical with that of *Jolly* v. *Rees*, I might think it necessary to address your lordships at greater length, but I should advise your lordships to act upon the view that the majority of the Court of Common Pleas arrived

at a right conclusion in deciding that case. No question arises here (any more than in *Jolly* v. *Rees*) as to what would have been the case if the wife had been left destitute, without an allowance suitable for her estate and condition, or if there had been desertion and cruelty. This is merely a case where a husband and wife are living together, although not in fact keeping up any establishment, and where he has in fact made her an allowance which, so far as one can judge from appearances, is sufficient to supply her with all necessary clothing, and the jury were satisfied that he directed her not to pledge his credit.

The first question, therefore, is this: whether the respondent's wife had, from her position as a wife, any authority to pledge her husband's credit, although such authority had been revoked by him. I admit that the fact of a man living with his wife always affords evidence that he intrusts her with such authorities as are ordinarily given to a wife. In the ordinary case of the management of a household the wife is the manager, and with such tradesmen as a butcher or a baker she would have authority to pledge her husband's credit; but even then I do not think the presumption would arise if the husband gave her the means of procuring the articles without credit. In the present case, however, your lordships have to determine whether the wife had a mandate to order clothes, which it would be proper for her in her station of life to have, although the husband had forbidden her to pledge his credit and had given her money to buy clothes.

For the reasons given by the majority of the Court of Common Pleas in *Jolly* v. *Rees*, and by the judges of the Court of Appeal in the present case, I am of opinion that there is nothing to authorize our holding that the wife had authority to pledge the husband's credit. I agree that if he knew that she had got credit, and had allowed the tradesmen to suppose that he sanctioned the transactions with them, it might well be argued that there was such evidence of authority that he could not revoke it without giving notice of the revocation to all who had acted upon the faith of his sanction. The general rule would be that which I have stated; but where an agent is clothed with an authority which is afterwards revoked, those who have dealt with him have a right to say, unless the revocation has been made known to them, that the principal is precluded from denying the continuance of that authority in the continuance of which he has induced them, as reason-

able persons, to believe. There have been many cases where a husband has sanctioned his credit being thus pledged by his wife, but there is no such case here. I cannot agree with my brother BYLES that the cases have established that the fact of a wife living with her husband alone entitles tradesmen to presume that the husband has given an authority which he is precluded from afterwards denying. I think that in such a case it is open to the husband to prove, if he can, that such an authority does not, in fact, exist, that being a question for the jury. This is not the case of the withdrawal of an authority which has been once given, but the question is whether the appellants, who had never before dealt with either the wife or the husband, were entitled to assume that the authority was implied from the mere fact of cohabitation, and I do not think that the law gave them any right to do so.

That the true ground on which a wife has power to bind her husband by her contract, even for necessaries, is that of agency, express or implied, is now generally well recognised: *Eastland* v. *Burchell*, 27 Am. Law Reg. 412, and note. The more delicate question is, what effect is to be given to the fact of cohabitation, at the time the contract is made? Is it merely *primâ facie* evidence of agency, to be rebutted and controlled by the husband, by any evidence which shows that in fact the agency does not exist? or, is it such a holding out by the husband that the wife was his agent, as to bind him to all persons who know of the cohabitation and do not know of the circumstances impugning such agency? In the one case it is assumed, that by cohabitation the husband clothes his wife with apparent authority to act for him in such matters and, therefore, if he chooses to revoke this authority and still continue the cohabitation, he is bound to give notice to third persons, in accordance with the rules applicable to other agencies, in which private instructions or orders to an agent, inconsistent with his apparent and usual authority cannot avail. In the other case it is supposed that every person trusts the husband at his peril; and with the burden of proving that the actual buyer was the duly authorized agent of the husband; of which cohabitation is one means of proof, and only a means. Cohabitation alone does not, on that theory, create an agency, but only furnishes evidence that it has been sometime created, and therefore until the plaintiff shows that the agency was once created, there is no need for the husband to show that the plaintiff had notice of any circumstances avoiding or terminating it. The modern English cases certainly seem to favor the latter view: *Jolly* v. *Rees*, 15 C. B. (N. S.) 628; *Eastland* v. *Burchell*, Law Rep., 3 Q. B. Div. 432; *Debenham* v. *Mellon*; *Shoolbred* v. *Baker*, 16 Law T. Rep. (N. S.) 359 (1867); *Chappell* v. *Nunn*, 4 C. L. (Irish) 316. In this case, the husband was the owner of considerable real estate, his rental being over 5000*l.* a year, all of which, during his temporary confinement in an insane asylum, was received by his wife for domestic purposes. She, notwithstanding, bought on his credit a pianette of the plaintiff, and hired a piano, which the jury expressly found to be necessaries; but it was nevertheless held by the court that he was not responsible, since his wife had his entire income, which was amply

sufficient to support herself and the family. See, however, *Swifte* v. *Nunn*, Weekly Notes for Nov. 30th 1878. On the other hand, the ancient English and the American cases, at least in their dicta, have been generally considered as laying down a different rule.

But in considering this question, two classes of cases should be laid entirely out of view, as not properly bearing on the precise point involved. One is where the husband has created his wife an implied agent in fact, by having previously paid her bills to the plaintiff without objection, or has known of her purchases, and seen her use or consume the goods with apparent acquiescence. All such cases may rest safely enough, on other and distinct grounds, and may prove a wife to be agent, in the same manner and with the same effect as in case of a mother, sister or daughter.

The other class, which ought not to influence the question here involved, is where the husband has utterly failed in his duty, and refused or neglected to supply his wife at all, or turned her out of doors without cause. Here an agency may be created or implied, *by law*, irrespective of his assent or dissent, and, therefore, no proof or evidence of actual assent is necessary.

The question still remains, does cohabitation alone create an agency or liability in law to pay for necessaries, until notice to the contrary is shown, or is it but a piece of evidence to be weighed for the plaintiff, and as *prima facie* sufficient, in the absence of anything to the contrary? Otherwise stated, the question is: Is the presumption of agency, arising from cohabitation, a presumption of *law*, or only a presumption of *fact*—A presumption of mere fact, because in most cases, and as a matter of fact and usage, the wife generally has such authority; and being only a presumption of fact, of course, liable to be controlled and overthrown like any other presumption of fact. And if capable of being overthrown, is it rebutted by proof merely of some facts and circumstances between husband and wife, inconsistent with such authority? or, must those facts and circumstances have been communicated to the tradesman who furnished the goods? The precise point has seldom arisen in America, disconnected with other circumstances which might have had weight in determining the result. In many of them the payment of prior bills, or the knowledge and apparent assent to the purchase, or the neglect or improper conduct of the husband entered into the case, and contributed more or less to the result.

We may, perhaps, obtain some light from other analogous cases on this subject. Suppose the implied or presumed agency of the wife is sought to be terminated by other means than by furnishing a supply or ready money enough, as in *Debenham* v. *Mellon*, viz., by the elopement or adultery of the wife. Now in such cases, it has always been considered that the fact itself terminated the former presumed agency, and that it was not necessary to prove that the tradesman *knew of the elopement*, or had any notice from the husband not to trust the wife: *Hunter* v. *Boucher*, 3 Pick. 289; *Sturtevant* v. *Starin*, 19 Wis. 268; *McCutchen* v. *McGahay*, 11 Johns. 231; *Cooper* v. *Lloyd*, 6 C. B. (N. S.) 519; *Morris* v. *Martin*, 1 Str. 647.

Again, a wife living with her husband is presumed to have authority to purchase clothing for herself, suitable to his station in life; but this presumed agency is controlled by proof, on the part of the husband, that she already had sufficient similar articles purchased elsewhere; and though this fact be unknown to the tradesman supplying the last bill, he cannot recover for the same, although the jury expressly find that they were "fitting for the station in life of the defendant's wife:" *Reneaux* v. *Teakle*, 8 Exch. R. 680; 24 Eng. L. and Eq.

345 (1853); *Holder* v. *Cope*, 2 C. & K. 437. And see *Atkins* v. *Curwood*, 7 C. & P. 756; *Richardson* v. *DuBois*, Law Rep., 5 Q. B. 51; *Clark* v. *Cox*, 32 Mich. 204 (1875), one of the best-considered cases on this subject on either side of the Atlantic.

Again, suppose the implied agency is terminated by a mutual separation, and an agreement is made for an adequate allowance, which is promptly paid by the husband, or a proper provision is made for her support with friends; a tradesman cannot sell to the wife on his credit, even though he has no notice of the separation or of the allowance. The facts themselves put an end to the former agency: *Mizen* v. *Pick*, 3 M. & W. 481; *Pidgin* v. *Cram*, 8 N. H. 350; *Cany* v. *Patton*, 2 Ashm. 140; *Kimball* v. *Keyes*, 11 Wend. 33; *Reeve* v. *Conyngham*, 2 C. & K. 444.

In all of these analogies, however, should be excluded the cases where the husband, before the elopement or separation, has been accustomed to pay his wife's bills to the same plaintiff; there, notice might be necessary; for he had a right to suppose all things remain as before; but in the illustrations above given, we suppose, as in *Debenham* v. *Mellon*, that the bill in suit was the first dealing with the plaintiff. See *Stevens* v. *Story*, 43 Vt. 327, as to the importance of this fact. See, also, Leake on Cont., p. 570; *Ryan* v. *Sams*, 12 Q. B. 460; *Filmer* v. *Lynn*, 4 N. & M. 559.

In addition to the cases cited above, another recently occurred in the Queen's Bench, *Wallis* v. *Biddick*, reported in 22 Weekly Rep. 76 (1873), and apparently not elsewhere, having an important bearing on this point. There the husband, while living with his wife, had frequently bought goods of the plaintiff, but always for ready money. The husband and wife afterwards separated, and he paid her the allowance mutually agreed upon in the separation deed. She subsequently bought necessaries of the plaintiff, who had no notice of the separation, and the jury found the plaintiff believed and had reasonable grounds for believing they still lived together. They also found that at the time of the purchase, the wife had sufficient allowance; and the main question was, whether the husband was liable for not having given the plaintiff any notice of the circumstances. On this point, BLACKBURN, J., said: "Then comes the question whether the person who seeks to enforce a claim on the ground of the husband's authority to the wife can say, 'You are precluded from denying the authority, though, in fact, it did not exist, because you did not inform me that it had ceased to exist.' In *Freeman* v. *Cooke*, 2 Ex. 664, Lord WENSLEYDALE, speaking of cases of estoppel by conduct, says: 'As for instance, a retiring partner, omitting to inform his customer of the fact, in the usual mode, that the continuing partners were no longer authorized to act as his agents, is bound by all contracts made by them with persons, upon the faith of their being so authorized.' He does not enter into the question of what creates a duty on a partner to give notice, but only says, that if in the usual mode it was necessary, there is an estoppel; so here there would be an estoppel, if notice were necessary, but the question is, whether it was necessary. If the wife had been authorized, during cohabitation, to deal on credit with the plaintiff, and had actually so dealt, then, I think, there would have been a duty on the defendant to give the plaintiff notice that her authority had been withdrawn. A man, honestly believing and with reasonable grounds, that they were still cohabiting, might in that case possibly be entitled to recover of the husband by virtue of *such* an estoppel. But if the tradesman had never been so authorized to give credit to the wife, but merely knew, as any one else knew, that the two were living together as man

and wife, then, I think, there is no duty on the husband to give notice to him of the separation. Where a man has given out his name to the world as a partner, it is sometimes said, that when he ceases to be one, a general notice must be given; even that is a question. But there is no authority for saying that when a man is separated from his wife, he must advertise the fact to all the world." QUAIN, J., concurred, and judgment was rendered for the defendant.

In other words, the liability or non-liability of the husband ordinarily depends upon the existence or non-existence of certain facts, and not upon the plaintiff's knowledge or ignorance of those facts. If a husband refuse or neglect to supply his wife with what is necessary for decency and comfort in his condition in life, he gives her credit to procure it for herself, on his account and at his charge; and it is immaterial that the plaintiff had no knowledge of the circumstances of the husband, or of the necessities of the wife. The burden is always on the plaintiff to show facts which create the liability of the husband; and if a person sells goods to her upon his credit, without his express authority, he takes the risk of being able to prove an authority by implication of law: *Eames* v. *Sweetzer*, 101 Mass. 80; *Gill* v. *Read*, 5 R. I. 346; *Porter* v. *Bobb*, 25 Mo. 36.

It should be stated, however, that some cases are apparently in conflict with *Debenham* v. *Mellon*; the most recent of which, in England, perhaps, is that of *Ruddock* v. *Marsh*, 1 H. & N. 601 (1856), in which a husband was held liable for necessaries supplied and consumed in his temporary absence from home, although he had left sufficient money with his wife to buy them, and directed her not to purchase on credit; but of these facts the plaintiff had no notice. This was on the ground that the tradesman had no notice that the wife was supplied with ready money; but one fact making such notice important, is stated in 38 Eng. L. & Eq. 516, viz., that "the defendant's wife, who lived with her husband, had been in the habit of purchasing groceries and provisions for the family, at the shop of the plaintiff," and apparently on credit, as the defendant's wife had "paid money on account at different times." If so, this would bring the case in harmony with *Wallis* v. *Biddick*, above cited. *Harshaw* v. *Merryman*, 18 Mo. 106, also seems opposed to these cases. The husband, there, during a temporary absence from home, in California, had made suitable provision for his wife and child to live with a friend, where they did stay some months; and then they went, without any default in her support, to reside with the plaintiff, *who had no notice* of the provision made for the wife by the husband; and on that exact ground he was allowed to recover; but this decision was apparently based largely upon *Holt* v. *Brien*, 4 B. & Ald. 252, in which it was held that the plaintiff could not recover, because he had notice from the husband; but it does not necessarily follow, that he could have recovered, if he had not received notice; a species of reasoning not uncommon, however.

EDMUND H. BENNETT.